No. 11572

United States

Circuit Court of Appeals

For the Ninth Circuit.

WILLIAM B. EDWARDS, BEN WHITE, ARCH ROBINSON, LEE WELLS, ARCH J. McLAREN, ARTHUR D. BARKELEW, OSCAR CLAYTON, ROBERT L. CULPEPPER, ESTATE OF CHARLES E. WELLS (By Lee Wells), ESTATE OF WILLIAM S. WELLS (By Harley Wells), ESTATE OF JOHN McLAREN (By Arch J. McLaren), and the ESTATE OF THEODORE BOWEN (By William B. Edwards),

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

Rotary Colorprint, 870 Brannan Street, San Francisco

No. 11572

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

WILLIAM B. EDWARDS in Pro Per, etc.,
Seeley, Calif.

For Appellee:

JAMES M. CARTER,
United States Attorney,

JOSEPH F. McPHERSON,
Special Assistant to the Attorney General,
600 U. S. Post Office
and Court House Bldg.,
Los Angeles 12, Calif. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

At a stated term, to wit: the September term, A. D. 1946, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the 21st day of October, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Wm. C. Mathes,
District Judge.

No. 5611-WM Civil

BEN WHITE, et al.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

This cause now coming before the Court; Wm. B. Edwards, appearing for the plaintiffs; Jos. F. MacPherson, Special Assistant to the Attorney General, appearing as attorney for the defendant.

Mr. Edwards asks that the Court consider the motions which he hands to the clerk, and asks permission to submit proposed motions without oral argument. It is ordered that the motions and amended complaint be filed. It is also ordered that, pursuant to stipulation of the parties, motion of the Government to dismiss, heretofore filed by counsel for the Government, stand addressed to the amended complaint. [2]

In the United States District Court
in and for the Southern District of California
Central Division

No. 5611 W.M. Civil

BEN WHITE, et al.
vs.
THE UNITED STATES.

MOTION TO PERMIT FILING AMENDED COMPLAINT

To the Honorable, the Judge of the above entitled Court:

The plaintiff in the above entitled case having made known to defense attorneys that he desired to amend the complaint on file, and having received notice that hearing of motion to dismiss the complaint was set for hearing October 25th before being able to file such amended complaint, plaintiff now moves to permit filing the complaint as now amended and hereto attached, it being stipulated that this complaint and supporting brief may replace the same papers now on file with no change required in the motion to dismiss or time of hearing.

/s/ WILLIAM B. EDWARDS.

It is so ordered.

.....

Judge.

MOTION FOR THREE JUDGE HEARING

If after reading the complaint and argument in this case the court should be inclined to deny the motion to dismiss the complaint this motion will be without reason. Motion is made for the reason (1) no court has yet taken jurisdiction in such a case unless a special Act giving the consent of Congress was first passed in each individual case, and (reason 2) making a decision for which there is yet no precedent might well be too great a burden for one judge to bear. This burden would remain in this notwithstanding Congress has now voted (July 25) to discontinue the consent requirement in other such cases, for (reason 3) by the terms of the new deal the right to discriminate against these plaintiffs would be still claimed. [3]

Therefore the issue in this case still is: (r. 4) whether the judicial department dares to function as an independent branch of the government, dispensing equal justice to all, or (r. 5) if it can only function by the consent of officials without judicial authority, yet assuming authority to veto the exercise of judicial authority by judicial officials.

The right of the judicial department to function as the Constitution designed being thus put on trial, the participation of three (or more) judges in such a trial would be a profitable assignment if it resulted in asserting such right, for (r. 6) such a decision is now long overdue and is as important to the American people as democracy itself, for

(r. 7) democracy cannot exist in a regime of discrimination.

These plaintiffs are not—of course—the only victims of discrimination in the United States. But it is the policy and principle rather than the proportion of the population victimized thereby that needs to be considered. For (r. 8) so long as discrimination is retained and asserted as a right the civil liberty of no citizen is safe, and all persons of good will—official or unofficial—will oppose the use and sanction of such a principle whether the victims be few or many.

/s/ WILLIAM B. EDWARDS. [4]

[Title of District Court and Cause.]

AMENDED COMPLAINT

To the Honorable, the Judge of the above entitled Court:

This is a class suit brought by plaintiff Edwards on his own behalf and on behalf of the other plaintiffs under the rule permitting the joinder of plaintiffs in one action where their right of recovery arises out of the same series of transactions and there is a common question of law and fact affecting their several rights and a common relief is sought.

Jurisdiction of this court is founded on the fact that at the time these claims accrued the plaintiffs were citizens of California, residing within the district and division of this court, that each of them was deprived of his liberty or his property or both,

by officials of the Government acting in their official capacity, but in this case acting in violation of the fifth amendment to the Constitution and other provisions of the Constitution, in disregard of the land laws of the United States, and in violation of section 5508 of the revised statutes relating to conspiracy, also known as section 19 of the criminal code, and the detriment and damage imposed upon the plaintiffs [5] by so doing, exclusive of interest and costs, exceeds three thousand dollars each.

For cause of action plaintiff alleges:

I.

After the plaintiffs had settled upon certain lands in east side of Riverside County, had filed homesteads thereon, improved and possessed the land, and no other persons had any right or title thereto, they were arrested, imprisoned and prosecuted as criminals by Department of Justice and Department of Interior officials cooperating in a conspiracy to charge these plaintiffs with committing a criminal conspiracy to deprive others of alleged rights to settle upon and claim as homestead the same land.

II.

The plaintiffs were induced to make such settlements and to clear, level and prepare the land for irrigation—it being desert in character and of no value without irrigation—because it was then under a reclamation withdrawal which invited those of little means to make such settlements and to im-

prove the land with the promise and contract expressed and implied by the terms of the reclamation law that if irrigation of the withdrawn area was "feasible" the Interior Department as the agent of the Government would contract for the construction of the necessary irrigation works, giving the settlers long time without interest to pay the construction costs.

III.

Never was there a reclamation project more feasible or so easily reclaimable as this, for in an early day a certain alien speculator had constructed a ditch with its intake a few miles upstream from the valley lands, which ditch could supply river water to the one hundred thousand acres of government lands in the valley, and by the device of alleging the valley lands to be "swamp" when they were in fact "desert," this alien secured title to some forty thousand acres of the valley lands first serviceable from said ditch, but died before getting the land colonized. The plaintiffs made their settlements and entries knowing that this ditch only needed reopening and extending to supply irrigation water to all the valley lands, and the reclamation withdrawal under which their settlements were made gave them reason to believe [6] Interior Department officials would move promptly to do this.

IV.

But Department officials made no move to provide water for these lands for no reason of feasi-

bility, but solely because a wealthy corporation called "the Land & Water Company" had acquired the tax delinquent estate lands, and the corporation also claimed the ditch which, constructed on Government land, was not tax delinquent, and to which the Government had in fact come to be the legal heir and owner. But Department officials not only did not oppose the desire of the corporation to have the exclusive right and title to this ditch which had cost the corporation nothing, they furthered and facilitated it in every possible way. First, by changing the "second form" reclamation withdrawal to a "first form" withdrawal which suspended the operation of the land laws and isolated these plaintiffs, and then by making a contest law by regulation to replace the contest law suspended by the withdrawal, both the withdrawal and the regulation made contest law being made or used for no purpose of reclaiming the land for the settlers, but solely for the purpose of reclaiming the rights of the deceived and deluded settlers to serve as "preferred" rights for corporation stooges, and later by conspiring with corporation officials to charge these plaintiffs with a criminal conspiracy as aforesaid.

V.

As the terms proposed by the corporation to permit settlers on the government land to share in the use of the river water would have enabled the corporation to capitalize the potential value of the settler's lands charging them any price the corpo-

ration saw fit, as a last resort these plaintiffs filed suit against the corporation to require it to render service on such terms as might be fixed by law. The advantage in wealth and prestige possessed by the corporation enabled it to protract this litigation for four years during which time the plaintiffs—being unable to get irrigation water—were unable to cultivate their land, and having spent their money in the water litigation they were helpless to defend themselves when the great power of the government was then used by Department of Justice and Department of Interior officials in [7] further aid of the wealthy corporation to get these plaintiffs out of the way of the corporation and nullify the judgment in the water suit.

VI.

The means used by Interior Department officials to effectuate this purpose was to ignore the settlements and entries of these plaintiffs and to treat the land improved and possessed by them as vacant government land subject to settlement and entry by others. The means used by Justice Department officials to effectuate the same purpose was to advise the corporation stooges to take forcible possession of the land then in the peaceable possession of these plaintiffs, it being agreed and understood that if these plaintiffs resisted this proceeding in any way they would be arrested and imprisoned on a charge of conspiracy to deprive the said stooges of alleged rights to so invade and dispossess the prior

possessors—a conspiracy of the invaders to charge a conspiracy against the persons whose premises were to be invaded.

VII.

Then when in pursuance of this conspiracy one Bodkin, with his agents, servants and contest clients, invaded the land improved and possessed by plaintiff Edwards and was removed by court order, the result was wired to the U. S. District Attorney at Los Angeles as had been agreed and understood, and said attorney dispatched U. S. Marshals in hot haste to arrest—not just the defending possessor—but also the other plaintiffs who had not yet had occasion to defend their possessions but were expected so to do when the intended invasion of their premises should also be made. The plaintiffs were then kept incommunicado for three days before being taken to a U. S. Attorney who attempted to extort from them as the condition of release, a promise not to oppose the invasion—he called it "settlement"—of said stooges by court proceedings or otherwise, and to induce such promise he asserted that to oppose such settlement was a criminal offense the punishment for which was ten years in the penitentiary and a five thousand dollar fine. Plaintiffs would promise only to "do nothing illegal." But the attorney reported they "had been released on their promise to cease such molestations, to dismiss any pending case in court [8] against" the stooges, and to "file no more complaints" against them.

VIII.

This attorney then threatened to prosecute the judge of the local court and so intimidated him that he made ex parte and out of court statement to Bodkin that he would "take back" the judgment theretofore regularly entered, and announced that he would not try any other such case. Then followed the invasion of the Culpepper land by another stooge, the reinvasion of the Edwards land by Bodkin, service on each by Culpepper and Edwards of forcible-detainer notice, and the rearrest of these plaintiffs for opposing or expecting to oppose the forcible invasion of others, but this time the plaintiffs were kept under the duress of this criminal charge for three years instead of three days.

IX.

At the trial besides the U. S. District Attorney and two deputies, a Field Agent of the Interior Department acted as an attorney, and a Special Assistant to the Attorney General came all the way from Washington to aid the able four against the bankrupt and helpless homesteaders charged with a conspiracy, but in fact and in truth the proceedings were in further execution of the conspiracy to punish these plaintiffs for opposing the exploiting plans of the wealthy Land & Water Company as aforesaid. And in this trial Department of Justice officials ignored the settlement and entry rights of these plaintiffs as Interior Department officials had before done, and asserted that the filing of forcible

detainer proceedings against the invaders were "overt acts" proving a criminal conspiracy of these plaintiffs. As the jury took this say-so of these high officials to be law and gospel, Culpepper and Edwards were convicted, fined, imprisoned, degraded, and "forever deprived of the right to hold any office of profit or trust under the Government." But the jury did disagree with the attorneys as to the other plaintiffs who had been arrested just to keep them from filing defensive proceedings.

Plaintiff here alleges that every attorney participating in that prosecution well knew that these plaintiffs were within their rights in defending their possessions, and the attorneys [9] were themselves the criminals and conspirators.

X.

Convicted of a "felony," confined in a jail cell with no money to employ legal aid and never having written a complaint in his life, Edwards wrote a complaint to quiet title to the land he was imprisoned for claiming and had it filed in court. He also had set for trial the forcible detainer complaint, the filing of which was made the excuse for the rearrest of these plaintiffs, and the duress of which proceedings had delayed trial of the detainer case for three years. The leading attorney in the criminal prosecution of these plaintiffs became the defense attorney for Bodkin in both cases. In the title case the courts finally decided the adversary had acquired no right, and as Bodkin had secured a patent for the land from the Government, the

court required him to deed the land to Edwards. In the detainer case Edwards got judgment for possession of the land and for six thousand dollars as a penalty for the unlawful invasion—none of which could be collected, yet with the same attorney defending that was the leading attorney in the criminal prosecution of these plaintiffs, never once in the three times this case was tried and appealed did he make the claim that Bodkin had a right to "settle" on the Edwards land, the sole defense being that Bodkin was legally in possession by virtue of an ejectment judgment, obtained after Edwards was arrested for filing this suit and not even permitted to know that a new ejectment action was being had—to the eternal shame of the Department of Justice. The technique here used was: "we hold 'em, you rob 'em."

XI.

Edwards having finally recovered—after ten years—the land and home of which he had been forcibly dispossessed, his Congressman promptly filed a bill to "reimburse"—not the forcibly evicted prior possessors—but the one defeated adversary for his court defeats. And notwithstanding its lack of legal or equitable basis, the Bodkin bill was promptly passed, the Claims Committee even attempting to provide a one-way jurisdiction for the court by reporting: "It is felt by the committee that the decisions of [10] the courts in this case did Bodkin an injury and injustice *for he* should recover." Backed by this statement Bodkin's attor-

ney argued to the Court of Claims: "The validity of this claim is not before the court. Congress has decided its validity and all the court has jurisdiction to do is to find the value of the land and render judgment." Which the court did, appraising the value of the land (made valuable by the work and expense of Edwards—not by Bodkin) at thirty thousand dollars. But in proceedings later the court denied the right of a claims committee to direct its judgment, and the judgment was vacated. Then a bill was promptly passed without objection from any source to pay that vacated judgment. Yet while giving such great consideration to the adversaries and with the facts made known, no Congressman would even file a bill for these plaintiffs.

XII.

But when a new Congressman filed a bill for these plaintiffs there was objections galore from department officials, Congressmen and later from the President. Department officials objected particularly to that part of the bill relating to the arrest and imprisonment of these plaintiffs and asserted such use of criminal process was "necessary to enforce the jurisdiction of the Interior Department." As the subcommittee continued to advocate passage of the bill contrary to the views of the Chairman, who asserted department officials "must be presumed to have acted in good faith," department officials finally reported that if the committee would cut out all mention of the criminal proceedings department officials would not further oppose

passage of the bill. But this proved to be a false promise made with no intention of abiding by it, but just to get the bill fixed up to make the veto claims to be later made appear to be proper. Then with nothing left in the bill to indicate differently department officials represented to the President—ex parte—that the claims in the bill were not based on tort, but merely on mistakes of law in making the land decisions, and by such false representations the wanted veto was secured.

XIII.

Noting that the veto message stated the ends of justice [11] require that the Government should recognize liability for tort, plaintiffs' Congressman and also their Senator filed bills with the respective Claims Commttees identical with the copies filed with this complaint. They also filed with the Committees copies of the printed brief stating the material facts and the court decisions pertinent to this case, copies of which are also filed for the information of the court. But because Department officials oppose passage of these bills Committee Chairmen defer to their desires and have refused for years and still refuse to permit passage of these bills, while passing other bills that are as inequitable as was the Bodkin bill.

XIV.

The several quarter sections comprising the land homesteaded by these plaintiffs are all situated contiguous and were identical in value with the Ed-

wards homestead, appraised by the Court of Claims for the purpose of reimbursing the Edwards adversary at thirty thousand dollars. Said appraisal was made at a time when attorneys for the adversary were claiming that the use of the land was not then worth anything and the adversary should not be required to pay anything on the bond filed to retain possession of the land pending appeals to the Court of Appeals and the Supreme Court. Plaintiff alleges if the use of the land had become unprofitable, that was the condition he received it after the adversary had the free use of it for ten years during which time he used it to raise cotton—a soil exhausting crop—without rotation or fertilization. But plaintiff also alleges that before being so exhausted, this land and the land the other plaintiffs were dispossessed of had a use value of ten thousand dollars per year, and this use value—belonging both in law and equity to these plaintiffs—was used by the adversaries to hire attorneys to maintain their possession, while the plaintiffs had to work by the day or otherwise to get their expenses. The result of this forcible reversal of the condition of prior possessor and adversary claimant by department officials was, that only one of the rightful owners overcame the handicap so imposed and recovered the possession forcibly taken, and this [12] plaintiff desires to prove to the court that the right of the other plaintiffs to recover the land improved and possessed by them is exactly the same as was his own right, and without the unlawful and infamous

action of department officials neither he nor they would ever have lost possession.

As a result of said interference—claiming no punitive recompense therefor and considering only the material loss imposed, conceding that any awards to the two first named plaintiffs could be called punitive as they claimed no land and any awards to them would be for their false arrest and imprisonment—plaintiff alleges that the ten last named plaintiffs have sustained material loss by being dispossessed of their land and homes, such loss amounting to more than sixty thousand dollars each. But because the defendant is the United States, although it is partly culpable for upholding such official action, discriminating against these plaintiffs and so far having barred the courts to them, the plaintiffs are willing to scale down their loss. But they can not scale it down in good conscience to less than the United States so freely gave to the adversary that this court, the Court of Appeals and the Supreme Court all said had no right, yet had been invested by United States officials for ten years with a possession that was then worth much more than thirty thousand dollars.

Wherefore, plaintiff prays: that the court will hear this case, and on proof of the facts alleged will enter judgment for the ten last named plaintiffs for the material loss imposed upon them but for not more than thirty thousand dollars each, and for costs.

/s/ WILLIAM B. EDWARDS.

State of California,
County of San Bernardino—ss.

William B. Edwards, being sworn, on his oath says: that he has read the foregoing complaint and knows the contents thereof, and that every material statement therein is true.

Subscribed and sworn to before me this 18th day of October, 1946.

[Seal] /s/ E. C. GRIDLEY,

Notary Public in and for the County of San Bernardino, State of California.

My commission expires November 26, 1946.

[Endorsed]: Filed Oct. 21, 1946. [13]

In the District Court of the United States in and for the Southern District of California, Southern Division

No. 724—SD

BEN WHITE, WILLIAM B. EDWARDS, et al.,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

MOTION TO DISMISS AMENDED COMPLAINT and POINTS AND AUTHORITIES IN SUPPORT THEREOF

Comes now the defendant, United States of America, by Eugene D. Williams, Special Assistant to the Attorney General, Lands Division, Department of Justice, acting pursuant to the authority and by direction of the Attorney General, and moves the court as follows:

I.

To dismiss the action because the Amended Complaint fails to state a claim against the defendant upon which relief can be granted.

II.

To dismiss the action because the Amended Complaint does not show that the defendant has consented to be sued.

III.

To dismiss the action because the alleged cause of action, if any, [14] set forth in the Amended Complaint is barred by the Statute of Limitations.

UNITED STATES OF AMERICA

By EUGENE D. WILLIAMS,
Special Assistant to the Attorney General.

JOSEPH F. McPHERSON,
Special Assistant to the Attorney General.
Attorneys for Defendant.

By /s/ EUGENE D. WILLIAMS.

[Endorsed]: Filed July 23, 1946. [15]

At a stated term, to wit: The September Term, A. D. 1946, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 28th day of October, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Wm. C. Mathes, District Judge.

No. 5611—WM Civil

BEN WHITE, WM. B. EDWARDS, et al.,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

This cause coming on for hearing motion of the defendant to dismiss the action and the amended complaint; Joseph F. McPherson, Assistant U. S. Attorney, appearing as counsel for the Government; Wm. B. Edwards being present in behalf of the plaintiffffs:

Mr. Edwards replies to question of the Court. Attorney McPherson presents the motions. The Court asks Mr. Edwards if he wants the advice of counsel, and A. L. Wirin, Esq., being present in court, offers to assist Mr. Edwards and the said plaintiff accepts the offer.

It is ordered that the cause be, and it hereby is, continued to November 18, 1946, at 10 A.M., for hearing motion. [16]

[Letterhead of Wirin and Okrand]

November 14, 1946

W. B. Edwards,
c/o Gateway Hotel,
555 Third Street,
San Bernardino, California.

Dear Mr. Edwards:

I am in receipt of your letter of November 10, relative to your case, and have also just spoken over the telephone with Mr. McPherson, the Assistant United States Attorney handling the matter.

Mr. Wirin, unfortunately has been called to the east and will be gone two or three weeks. I have been unable myself to look thoroughly into your case and so am not in a position to advise you as to whether there is something that can be done legally in your case and as to whether our office can handle it.

Mr. McPherson told me that I could tell you that if you desired more time in which to see whether you shall be able to make some arrangements with us or to see if you can get other professional assistance, he would have no objection to having the matter continued over again.

Although as yet we are not in the case, if you will accept this bit of advice, my suggestion is that you do ask for the matter to be put over to a future date and I feel sure if you communicate with Mr. McPherson* by telephone immediately, that it will save your coming to Los Angeles on Monday.

Sincerely yours,

/s/ FRED OKRAND.

FO:ns

* You can reach Mr. McPherson by calling Madison 7411, Extension 221.

[Endorsed]: Filed Nov. 25, 1946. [17]

In the United States District Court in and for the Southern District of California, Central Division

No. 5611 W.M. Civil

BEN WHITE, et al.,

vs.

THE UNITED STATES.

MOTION TO CONTINUE HEARING

To the Honorable, the Judge of the above entitled court.

The plaintiff in the above entitled case, continued till Nov. 18, finding it will be impossible to be present at that time, moves to further continue said hearing another week, or until Nov. 25, at which

time plaintiff hopes he can appear either in personam or by attorney.

Copy mailed to defense attorney, Joseph F. McPherson, at 807 Federal Bldg.

/s/ WILLIAM B. EDWARDS,
Co-plaintiff.

It is so ordered November 25, 1946, at 10 A.M.

Date: November 15, 1946.

/s/ WM. C. MATHES,
Judge.

[Endorsed]: Filed Nov. 15, 1946. [18]

San Bernardino, Cal., Dec. 13, 1946.

Case of Ben White et al, v the United States No. 5611 W.M. Civil.

To the Honorable, the Judge of the Court, to the kindly Clerk, Mr. Somers, to the able Assistant Attorney General, Joseph F. McPherson, and to attorneys Wirin and Okrand, Greeting.

In the matter of the much delayed dismissal of the motion to dismiss the complaint in this case now set for Dec. 16, the active plaintiff therein is sorry to say he will not be able to appear at that date, and not having heard from the attorney kindly suggested by the court, he hopes his motion to dismiss the complaint without prejudice need not be further delayed.

But please be advised that this plaintiff—health and high water permitting—will certainly appear at the next motion day to file a new complaint and to get a "show cause" order signed by the court to be served on the judiciary committee of Congress by U. S. Marshalls with the new complaint. So your humble servant desire to have a time set when others will not be waiting to be heard, and that will not require him to start from here before day light, as an early hearing would require, for in his frail condition such early traveling tends to shorten his life, and if you all will lend to the next hearing he will explain that his desire to remain here a while longer is not just a selfish desire, but concerns many others.

/s/ WILLIAM B. EDWARDS.

Gateway Hotel.
555 3rd St. [19]

At a stated term, to wit: The September Term, A.D. 1946, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the 16th day of December, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Wm. C. Mathes, District Judge.

No. 5611—WM Civil

BEN WHITE,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

This cause coming on for hearing motion of the defendant to dismiss the action; Joseph F. McPherson, Assistant U. S. Attorney, appearing as counsel for the Government, it is ordered that the cause is hereby continued to 2 P.M. for the said hearing.

At 2 P.M. court reconvenes herein and counsel for the Government being present as before, it is ordered that the cause as to the said motion be submitted. [20]

[Title of District Court and Cause.]

ORDER DISMISSING ACTION FOR LACK OF JURISDICTION

This cause having heretofore come before the Court for hearing on motion of defendant for an order dismissing the action, and the motion having been submitted for decision, and it appearing to the Court that the United States of America has not consented to be sued upon any cause of action asserted in the original complaint or the amended complaint herein;

It Is Ordered that this action be and it is hereby dismissed for lack of jurisdiction over the person of the defendant; and

It Is Further Ordered that this dismissal shall not operate as an adjudication upon the merits; and

It Is Further Ordered that the Clerk this day forward copies of this order by United States mail to the attorneys for the parties appearing in this cause.

December 17, 1946.

/s/ WM. C. MATHES,
United States District Judge.

Judgment entered Dec. 17, 1946.

Docketed Dec. 17, 1946, 10 Book 41, Page 49.

EDMUND L. SMITH,
Clerk.
By /s/ LOUIS J. SOMERS,
Deputy.

[Endorsed]: Filed Dec. 17, 1946. [21]

United States District Court, Southern District of California, Central Division

NOTICE OF APPEAL

To Edmund L. Smith, Clerk, to Louis J. Somers, Deputy, to James M. Carter, United States Attorney and/or Joseph F. McPherson, Special Assistant to the Attorney General.

Gentlemen:

In re Ben White et al v the United States, 5611, WM Civil, dismissed Dec. 17, 1946, for want of jurisdiction, please take notice that the plaintiffs therein hereby appeals said decision to the United States Court of Appeals for the Ninth Circuit, and desires all papers filed in this case to be transferred to said Court of Appeals.

Witness my hand and seal this 18th day of February, 1947.

(Copy mailed to defense attorneys.)

/s/ WILLIAM B. EDWARDS.

(And excuse me for getting ahead of the hounds. This appeal was intended to be taken immediately.)

[Endorsed]: Filed Feb. 25, 1947. [22]

In the United States District Court, Southern District of California, Central Division

PETITION FOR APPEAL

To Edmund L. Smith, Clerk; Louis J. Somers, Deputy, Federal Bldg., Los Angeles, and to James M. Carter, U. S. Atty.; Joseph F. McPherson, Special Asst. to the Attorney General, D.J.

Gentlemen:

In re Ben White et al v the United States, 5611 WM Civil, please take notice that the acting plaintiff therein files this petition for appeal to the Ninth Circuit Court of Appeals from the judgment of the District Court dated Dec. 17, 1946, and desires the record on appeal to show that the following errors are claimed to have been made in making said judgment, to wit:

(1) Error in not dismissing the former petition on motion of the acting plaintiff without prejudice to filing a new petition to bring the case within the new "tort" law passed Aug. 2, 1946, and—

(2) Error in continuing said motion from time to time to require the acting plaintiff to make a deal with a certain attorney. Also:

(3) Error in finally dismissing the former petition for the stated reason of "no jurisdiction" when the acting plaintiff did not and could not make a deal with said certain attorney.

Whether or not the court had jurisdiction under the petition dismissed is a "moot" question that need not now be considered. The question to be considered on appeal is, would the court have had jurisdiction under the present petition if the former petition had been dismissed without prejudice as moved by the acting plaintiff, instead of being dismissed with prejudice. [23]

Therefore only the present petition (No. 6177—O'C.) need be in the record for appeal. But the record should also contain the date when this case was first filed, the date when the motion of the acting plaintiff to dismiss without prejudice was first made orally, the written motion to dismiss later made, and the subsequent judgment of the court, with this petition and affidavit appended.

AFFIDAVIT

William B. Edwards, being sworn, says: that he is the acting plaintiff in the above entitled case, is eighty-five years of age and his life expectancy is practically nill, his present means is derived merely from a pension which is insufficient to pay for room and board under the present high cost of living. He has therefore been obliged to find situations in rural and distant places where he could partly pay for room and board by doing chores on a farm. By so doing he has so far been able to save enough from his pension to pay the court costs, travel and hotel bills incurred in this case, but he has not been able to pay any attorney fees or retainers, and will not

be able to pay the cost of this appeal if the record must be printed, or more than the necessary costs incurred.

He has included his former neighbors in this case voluntarily, but he can not ask them for expense money as their past experience (with attorneys) has caused them to believe and say that it is just a waste of time and money to try this case. He has no heirs, and can not expect any benefit from this case personally, whatever the result, but the other plaintiffs should benefit, and the question of "equal justice to all" here involved, is vitally important to the Government and the people, and especially to the judicial department. [24]

Therefore the acting plaintiff petitions the Ninth Circuit Court of Appeals to hear this appeal with as little cost to this plaintiff as possible, thanking that court profoundly for having so sustained the lay pleadings of this plaintiff on a former occasion, (Edwards v Bodkin, 249 Fed. 5620) when every attorney tried—then and since—did nothing more for these plaintiffs than to collect unearned fees.

/s/ WILLIAM B. EDWARDS.

State of California,
County of Imperial—ss.

William B. Edwards, being sworn, says: That he has read the foregoing statement and knows the contents thereof, and that every statement made therein is true.

/s/ WILLIAM B. EDWARDS.

Subscribed and sworn to before me this 4th day of March, 1947.

[Seal] /s/ D. S. DAWSON,

Notary Public in and for the County of Imperial, State of California.

[Endorsed]: Filed March 6, 1947. [25]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 25, inclusive, contain full, true and correct copies of Minute Order Entered October 21, 1946; Motion to Permit Filing Amended Complaint and Motion for Three Judge Hearing; Amended Complaint; Motion to Dismiss Amended Complaint; Minute Order Entered October 28, 1946; Letter dated November 14, 1946, to W. B. Edwards from Wirin and Okrand; Motion

to Continue Hearing with Order Thereon; Letter dated December 13, 1946, to the Honorable, The Judge of the Court, etc., from William B. Edwards; Minute Order Entered December 16, 1946; Order Dismissing Action for Lack of Jurisdiction; Notice of Appeal and Petition for Appeal and Affidavit which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to $6.80 which sum has been paid to me by appellant William B. Edwards.

Witness my hand and the seal of said District Court this 20th day of March, A.D. 1947.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy Clerk.

[Endorsed]: No. 11572. United States Circuit Court of Appeals for the Ninth Circuit. William B. Edwards, Ben White, Arch Robinson, Lee Wells, Arch J. McLaren, Arthur D. Barkelew, Oscar Clayton, Robert L. Culpepper, Estate of Charles E. Wells (By Lee Wells), Estate of William S. Wells (by Harley Wells), Estate of John McLaren (By Arch J. McLaren), and the Estate of Theodore Bowen (by William B. Edwards), Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed March 27, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.